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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,735	07/02/2003	John G. Liebl	M297.12-0298	5811
7590	03/10/2004		EXAMINER	
Nickolas E. Westman Westman, Champlin & Kelly Suite 1600 900 Second Avenue South Minneapolis, MN 55402-3319			BEACH, THOMAS A	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 03/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/612,735	LIEBL, JOHN G.	
	<b>Examiner</b> Thomas A Beach	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) 14 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/14/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 6, and 9 are objected to because of the following informalities: (on line 3) claim 6 is composed of two sentences, which is improper; and claim 9, on line 5, "impper" appears to be a misspelling of --impeller-- and on line 9 of claim 9, "the base chute" lacks proper antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 4-7, 9-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by James 2,408,857. James shows a snow remover with a housing for collecting snow to be removed, a powered impeller 29 for receiving snow from the housing and projecting snow upwardly, discharge chute 33 receiving the snow from the impeller and providing a passage for the snow an outer end of the chute, the discharge chute having base section mounted adjacent the impeller (figure 3), and an upper chute section 34 pivotally mounted to an upper end of the base chute section about generally horizontal pivot, the upper chute section forming an extension of the base chute section a working position, and being foldable downwardly about the pivot (figure 3), and a

support saddle 36 on the upper chute section that engages a portion of the housing when the upper section in a downwardly folded position for storage (col. 3, lines 56-59).

As concerns claim 2, James shows the apparatus of claim wherein the support saddle is mounted onto a movable strut 37 that is pivotally mounted to the upper chute section, and the strut having an end supportable on the base chute section when the outer chute section in the working position.

As concerns claim 4, James shows the housing 10 has an upper edge (along 11) extending between side plates, and the support saddle resting (via elements 36/38) on the upper edge where the upper chute section in the folded position.

As concerns claim 5, James shows the strut 37 is pivotally mounted to the upper chute section (figure 3), and has an opposite end, a bracket 42 on the base chute section, and the opposite end of the strut being attachable the bracket on the base chute section with the upper chute section in its working position.

As concerns claim 6, James shows a powered snow blower having a discharge chute receiving snow projected by the blower, and directing the snow to a discharge end, the discharge chute having a base section mounted snow blower 33, and upper chute section 34 having the discharge end pivotally mounted to an upper end of the base section about a generally horizontal pivot (figure 3), the upper section being foldable so the discharging end is adjacent (dotted position; "adjacent" is merely a relative term) a support surface for the snow blower, and is supported on portion the snow blower (figure 3).

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As concerns claim 7, James shows the strut pivotally mounted to the upper chute section, and the strut 37 having an end supportable on the base chute section when the outer chute section is in working position.

As concerns claim 9, James shows a snow blower attachment for prime mover comprising housing having a snow feeder, powered impeller 29 for receiving snow from the snow feeder and projection the snow upwardly, discharge chute for receiving the snow from the impeller as for discharging snow at raised position, and an upper section 34 pivotally mounted together about generally horizontal pivot, the upper chute forming an extension of the base chute 34 section working position and section being foldable downwardly about the pivot, a support bracket 42 on the upper chute section that engages and supported on a portion of the housing (indirectly via elements 35 & 36) when the upper section is in a downwardly folded position for storage.

As concerns claim 10, James shows the support comprises a strut 37 that has one end pivotally mounted to the upper chute section, the strut having a second end connectable to the base chute section to support the upper chute section in a working position.

As concerns claim 11, James shows the strut 37 extending from the pivot of the one end an attachment on the base chute section below the pivotal mounting between the base chute section and upper chute section (figure 3), and when the upper chute section is folded downwardly (dotted position), the strut extending from the pivot of the one end to rest on the housing.

As concerns claim 13, James shows the housing has an upper edge extending between side plates, and the strut has a support thereon that rests on the upper edge when the upper chute section is in the folded position.

4. Claims 1-2, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Husso 4,651,452. Husso shows a snow remover with a housing for collecting snow to be removed, a powered impeller 2 for receiving snow from the housing and projecting snow upwardly, discharge chute receiving the snow from the impeller and providing a passage for the snow an outer end of the chute, the discharge chute having a base section 41 mounted adjacent the impeller, and an upper chute section 42 pivotally mounted to an upper end of the base chute section about generally horizontal pivot, the upper chute section forming an extension of the base chute section a working position, and being foldable downwardly about the pivot (figure 1, dotted), and a support saddle 45 on the upper chute section that engages a portion of the housing when the upper section in a downwardly folded position for storage (col. 4, lines 40-41).

As concerns claim 2, Husso shows the apparatus of claim wherein the support saddle is mounted onto a movable strut 44 that is pivotally mounted to the upper chute section, and the strut having an end supportable on the base chute section when the outer chute section in the working position.

As concerns claim 4, Husso shows the housing has an upper edge extending between side plates, and the support saddle 45 resting on the upper edge where the upper chute section in the folded position (at element 45 in figure 1).

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As concerns claim 6, Husso shows a powered snow blower having a discharge chute receiving snow projected by the blower 2, and directing the snow to a discharge end the discharge chute having a base section mounted 41 snow blower, and upper chute section 42 having the discharge end pivotally mounted to an upper end of the base section about I generally horizontal pivot, the upper section being foldable so the discharging end is adjacent a support surface for the snow blower, and is supported on portion the snow blower (figure 1, via elements 44 & 45).

As concerns claim 7, Husso shows the strut 44 pivotally mounted to the upper chute section, and the strut having an end supportable on the base chute section when the outer chute section is in working position.

As concerns claim 9, Husso shows a snow blower attachment for prime mover comprising housing having a snow feeder, powered impeller 2 for receiving snow from the snow feeder and projection the snow upwardly, discharge chute for receiving the snow from the impeller as for discharging snow at raised position, and an upper section 42 pivotally mounted together about generally horizontal pivot, the upper chute forming an extension of the base chute section 41 working position and section being foldable downwardly about the pivot, a support bracket 45 on the upper chute section that engages and supported on a portion of the housing when the upper section is in a downwardly folded position for storage (col. 4, lines 40-41)..

As concerns claim 10, Husso shows the support comprises a strut 44 that has one end pivotally mounted to the upper chute section, the strut having a second end connectable to the base chute section to support the upper chute section in a working

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position (element 45 is connected both to the top of the housing and the base chute section, Figure 1).

As concerns claim 11, Husso shows the strut 44 extending from the pivot of the one end an attachment on the base chute section below the pivotal mounting between the base chute section and upper chute section, and when the upper chute section is folded downwardly, the strut 44 extending from the pivot of the one end to rest on the housing (via element 45).

As concerns claim 13, Husso shows the housing has an upper edge extending between side plates, and the strut has a support thereon that rests on the upper edge when the upper chute section is in the folded position (figure1, considered between the end, the side plates).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 8, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Husso 4,651,452 in view of Greider 4,205,468. As concerns claims 3, 8 and 12, Husso shows a hydraulic cylinder 44 providing force urging the upper chute section seat on the base chute section when in the working position and being attached between the base chute section the upper chute section between the base chute section the upper

chute section such that the line of force of the cylinder goes over center relative to horizontal pivot as the upper chute section folds to the folded position for storage, but does not show a spring for providing force urging the upper chute section seat on the base chute section when in the working position. However, Greider show a similar snow removal device with an upper and lower chute having a spring being attached between the base chute section the upper chute section such that the line of force of the spring goes over center relative to horizontal pivot as the upper chute section folds to the folded position for storage whereby the spring 28 exerts a force urging an outer end of the upper chute section toward the impeller (figure 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Husso, as taught by Greider, to include a spring instead of the hydraulic cylinder to provide a more inexpensive means to fold and unfold the chute with less mechanical parts, thus reducing down time due to the fatigue of more complex mechanical components.

***Allowable Subject Matter***

7. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Conclusion***

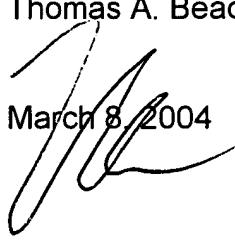
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

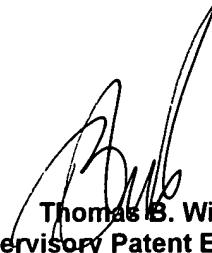
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A Beach whose telephone number is 703.305.4848. The examiner can normally be reached on Monday-Thursday, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703.308.3870. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9306 or 703.872.9306 for regular communications and 703.872.9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.4198.

Thomas A. Beach

  
March 8, 2004

  
Thomas B. Will  
Supervisory Patent Examiner  
Group 3600